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Letter of Appeal
Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, S.W.
Washington, DC 20554

**NOTICE OF APPEAL AND
REQUEST FOR REVIEW**

Re: APPEAL OF USAC ADMINISTRATOR'S DECISION ON FCC REMAND –
FUNDING YEAR 2002-2003 DATED FEBRUARY 5, 2009
CC DOCKET NO. 02-6 and CC DOCKET NO. 96-45
FUNDING YEAR: 2002-2003
SPIN: 143026575
FORM 471 APPLICATION NUMBER: 309196
FUNDING REQUEST NUMBERS: 803634, 803671, 803707, 803755, 803806
APPLICANT NAME: New Visions Academy
APPLICANT CONTACT: Kathy Green
BILLED ENTITY NAME: New Visions Academy
BILLED ENTITY NUMBER: 223454
BILLED ENTITY AND APPLICANT CONTACT PHONE NO. (973) 399-2829
SERVICE PROVIDER: Independent Computer Maintenance, LLC
SERVICE PROVIDER IDENTIFICATION NO.: 143026575
SERVICE PROVIDER CONTACT PERSON: Anthony Natoli
SERVICE PROVIDER CONTACT PHONE NO.: (973) 916-1800
SERVICE PROVIDER FAX NO.: (973) 916-1986
SERVICE PROVIDER E-MAIL: TONYN@ICM CORPORATION.COM

Enclosure A: Copy of Administrator's Decision on FCC Remand – Funding Year 2002-2003 dated February 5, 2009.

Enclosure B: Copy of FCC Decision DA 08-2363 released October 30, 2008.

Enclosure C: Copy of New Visions Academy's request for SPIN changes and copies of e-mails from the School and Library Division Client Operations to ICM dated August 26, 2003 granting the requested SPIN changes and Funding Commitment Reports showing approval of the other SPIN changes.

Enclosure D: Copy of FCC Proceeding Number FCC-06-55, and Order under CC Docket No. 02-6 adopted May 2, 2006 and released May 19, 2006.

Enclosure E: Copy of the ICM appeal (without enclosures) to the FCC dated December 9, 2008.

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Gentlemen:

Please accept this letter and its enclosures as Independent Computer Maintenance, LLC's ("ICM") appeal of the Schools and Libraries Division ("SDL") of the Universal Service Administrative Company ("USAC") Administrator's Decision on FCC Remand – Funding Year 2002-2003 dated February 5, 2009 ("Administrator's Decision"). A copy of the Administrator's Decision is annexed hereto as Enclosure A. Said Administrator's Decision approved USAC's prior funding denial with respect to Application Number 309196 and the Funding Request Numbers 803634, 803671, 803707, 803755 and 803806 (hereinafter "FRNs") issued pursuant thereto. The Administrator's Decision was issued pursuant to the FCC Order DA 08-2363 (released October 30, 2008) "directing USAC to detail in writing to the applicant the specific information or documentation it seeks from the applicant." (Enclosure B, page 4). The basis for the Administrator's Decision was that since the Applicant (New Visions Academy) was closed and the "necessary information was and is not forthcoming, USAC is still unable to determine if the funding requests were in compliance with Program Rules." (Enclosure A, Page 2). A copy of FCC Decision DA 08-2363 (released October 30, 2008) is annexed hereto as Enclosure B. The failure of the USCA to comply with FCC Decision DA08 - 2363 either in law or in spirit renders the Administrators Decision null and void.

FACTS

Upon information and belief, New Visions Academy filed the Form 470 and related technology plan with respect to Form 471 Application Number 309196 ("Application 309196") on or about December 14, 2001 and subsequent thereto the FRNs were issued. ICM did not become involved with the FRNs until August 11, 2003 and September 29, 2003, when pursuant to SPIN change requests of the Applicant, New Visions Academy, ICM was proposed as the new service provider replacing Diversified Computer Solutions, Inc. ("DCS"). A copy of New Visions Academy's request for SPIN changes are annexed hereto as Enclosure C along with copies of e-mails from the School and Library Division Client Operations to ICM dated August 26, 2003 granting the aforesaid requested SPIN changes and Funding Commitment Reports showing approval of the other SPIN changes.

Subsequent to the granting of the SPIN changes by USAC, ICM rendered the equipment, services and other efforts needed to successfully fulfill all the requirements of the FRNs.

On March 16, 2004, the USAC issued a Commitment Adjustment Letter concerning the FRNs seeking to "rescind in full" the FRNs, since there was an indication that "the vendor (ICM) was improperly involved in the competitive bidding process". On May 12, 2004, ICM filed an appeal of that Commitment Adjustment Letter.

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On October 12, 2004, USAC issued its Administrator's Decision on Appeal denying in full ICM's appeal. On December 8, 2004 ICM filed an appeal of the Administrator's Decision with the FCC. On May 2, 2006, the FCC adopted in Proceeding Number FCC-06-55, (released May 19, 2006) an Order under CC Docket No. 02-6, granting the appeal of ICM (with respect to a number of applications including Application 309196 relating to the FRNs) and 29 other entities. This Order found that the "USAC denied the requests for funding without sufficiently determining that the service providers improperly participated in the applicant's bidding process." (Page 3 ¶6 of the Order). It further ordered the USAC to "Complete its review of each remanded application (and issue an award or a denial based on a complete review and analysis) listed in the Appendix no later than 120 days from the release of this Order." (Page 4 ¶7 of the Order). Application 309196 which contained the FRNs was listed in the Appendix. (See page 7). A copy of the FCC's Order is annexed hereto as Enclosure D. The FCC ordered 120 day deadline expired without the USAC either obtaining an extension of the deadline or issuing an award or denial of Application 309196 and the related FRNs as required by that Order.

On February 21, 2007, USAC issued a Revised Funding Commitment Decision Letter reducing the FRNs to \$0 again based upon substantially the same grounds as previously alleged and citing that the "Applicant (not the provider) has not provided sufficient documentation to determine eligibility of this item." By letter dated April 9, 2007, ICM appealed this Revised Funding Commitment Letter and by an Administrator's Decision on Appeal dated June 28, 2007 USAC denied ICM's appeal. On August 6, 2007, ICM appealed the Administrator's Decision to the FCC. In response to ICM's August 6, 2007 FCC Appeal the FCC issued and released on October 30, 2008 the Commission's Decision DA 08-2363.

In the interim, by Demand Payment Letter dated May 15, 2008 ("DPL") USAC notified ICM "of the exact amount of recovery being directed towards you" and give ICM "an opportunity to appeal USAC's determination that recovery should be directed towards you."¹ On July 2, 2008 ICM appealed the DPL to the USAC, challenging the DPL and the Commitment Adjustment Reports ("CAR") annexed to the DPL. On October 14, 2008 USAC issued an Administrator's Decision on Appeal – Funding Year 2002-2003, which denied in full ICM's appeal and on December 9, 2008 ICM appealed the October 14, 2008 Administrator's Decision to the FCC. That appeal is presently pending before the FCC. A copy of that FCC appeal without enclosures is annexed hereto as Enclosure E.

On February 5, 2009 the USAC issued the Administrator's Decision on FCC Remand – Funding Year 2002-2003 which is the subject matter of this appeal.

¹ This DPL addressed Application 309196 but only FRNs 803634, 803671 and 803707.

ARGUMENTS

1. If there was any wrong doing or impropriety in the competitive bidding process with respect to the FRNs and Application 309196, ICM had no involvement in that process or application and therefore pursuant to the decision of the FCC and the rule of law, any recover, if justified, must be the responsibility of the Applicant, New Visions Academy, and any other third persons involved in the Application or competitive bid process, but clearly not the responsibility of ICM, who was just an innocent service provider. The Administrator's Decision makes it clear that notwithstanding ICM's innocence and lack of participation in the bid process it intends to hold ICM liable for any recovery, which is a violation of law, equity and the FCC's prior Decisions.

As set forth in the facts above, ICM had no contact with the Applicant, New Visions Academy, at the time the Form 470 and technology plan were filed by New Visions Academy on or about December 14, 2001. ICM did not become involved with the FRNs until August 11, 2003 and September 29, 2003, when pursuant to SPIN change requests of the Applicant, New Visions Academy, ICM was proposed as the new service provider replacing Diversified Computer Solutions, Inc. It is irrefutable that since ICM had no association with the Applicant until after August, 2003, well after the Application was filed (December, 2001) and any questionable acts relating thereto, if any, were committed; it could not have been "improperly involved in the competitive bidding process". To insinuate or allege that ICM had any connection with any such misconduct is totally baseless. On these irrefutable facts alone no recovery should be sought (directly or indirectly) toward ICM because it was and is an innocent party. To make ICM vicariously liable is equally absurd and baseless as neither DCS nor New Visions was acting at ICM's direction.

The FCC in *In re Federal-State Joint Board on Universal Service*, 19 FCC Rcd 15252 (adopted July 23, 2004) issued a ruling directly on point concerning which party the USAC was to seek recovery from. In that decision the FCC in response to petitions by various providers, directed the USAC to re-direct its efforts to recover any funds that had been allegedly distributed unlawfully from the providers to the party or parties who have committed the statutory or rule violation in question.

The FCC stated with respect to the "party or parties who have committed the statutory or rule violation" that: "We do so recognizing that in many instances, this will likely be the school or library, rather than the service provider." (Emphasis added). *In re Federal-State*, 19FCC Rcd at par. 10.

In reaching this conclusion, the FCC noted that: "The school or library is the entity that undertakes the various necessary steps in the application process, and receives the direct benefit of any services rendered. The school or library submits to USAC a completed FCC Form 470, setting forth its technological needs and the services for which it seeks discounts. The school or library is required to comply with the Commission's competitive bidding requirements as set forth in Sections 54.504 and 54.511(a) of our rules and related orders. The school or the library is the entity that submits FCC Form 471, notifying the Administrator of the services that have been

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ordered, the service providers with whom it has entered into agreements, and an estimate of the funds needed to cover the discounts to be provided on eligible services.” *id.* At par. 11.

The Commission in that Order also stated that although the service providers also have to follow the rules and regulations, those are with regard to “the supported service, and as such, must provide the services approved for funding within the relevant funding year. The service provider is required under our rules to provide beneficiaries a choice of payment method, and, when the beneficiary has made full payment for the services, to remit discount amounts to the beneficiary within twenty days of receipt of the reimbursement check. But in many situations, the service provider simply is not in a position to ensure that all applicable statutory and regulatory requirements have been met. Indeed, in many instances, a service provider may well be totally unaware of any violation. In such cases, we are convinced that it is both unrealistic and inequitable to seek recovery solely from the service provider.” (Emphasis added). *id.* at par. 11.

The USAC makes it clear in its Administrator’s Decision that it intends to pursue ICM for any recovery under the FRNs. It states in the Decision that it “received information that New Visions Academy is closed” (Enclosure A, page 2) and that “only the applicant can provide the necessary information to make a determination of whether any competitive bidding violations occurred” *id.* And therefore it has fulfilled its obligations under FCC Order DA 08-2263 by doing nothing and getting no additional information to determine if its prior finding was correct or adequately supported by the facts. In fact it states “Therefore, USAC is unable to provide another opportunity for the applicant to respond to require questions/certifications” *id.* The one thing the USAC fails to state is what efforts it made to find the principals of New Visions or anyone associated with DCS the original provider, to find out the answers to its “specific information or documentation” needed by the USCA, as directed by the FCC. The short answer is it probably made none but was willing to let the matter slide with a half hearted attempt because it knew that it would eventually attempt to recover any denied funding from ICM, which had no ability to defend itself.² The USAC makes its intentions very clear stating that the “new service provider (ICM) needs to accept responsibility for what occurred during the bid process. Since the bid process has been found to be tainted, ICM is also responsible.” (Enclosure A, page 2). Any such result holding ICM responsible for any liability related to any funding denial is arbitrary and capricious and is not supported by any doctrine either in law or in equity or this Commission’s prior rulings. It was this Commission’s intention to have the USAC request and obtain further information and to utilize that information to review its prior findings. The USAC’s half-hearted actions to obtain such information do not measure up to either the spirit or the law of the FCC’s Decision and is just a veil to conceal the USAC’s real agenda of proceeding against ICM, an innocent provider, to recover any alleged payments made in violation of the program rules.

² As an innocent party that had nothing to do with the application or the competitive bidding requirements, ICM has no evidence or documents to prove the propriety or impropriety of that process and for the USAC to ask ICM to produce such documentation would be an absurdity, however there may be public documents that may meet the USAC requests that could be provided if ICM had notice of the USAC request. See Argument 3 below.

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2. All Revised Funding Commitment Letters, Funding Commitment Adjustment Reports and Demand Payment Letters issued by USAC with respect to Application 309196 and the FRNs subsequent to May 2, 2006 when the FCC in Proceeding FCC-06-05 adopted an Order under CC Docket No. 02-6 are invalid because the USAC failed to comply with the requirements of that Order.

As set forth in the Fact section above, the FCC on May 2, 2006 adopted in Proceeding FCC-06-05, (released May 19, 2006) an Order under CC Docket No. 02-6, granting the appeal of ICM (with respect to a number of applications including Application 309196 relating to FRNs); finding that the "USAC denied the requests for funding without sufficiently determining that the service providers improperly participated in the applicant's bidding process." (Page 3 ¶6 of the Order). It further ordered the USAC to "Complete its review of each remanded application (and issue an award or a denial based on a complete review and analysis) listed in the Appendix no later than 120 days from the release of this Order." (Page 4 ¶7 of the Order). Application 309196, which relates to the FRNs, was listed in the Appendix. (See page 7). The 120 day FCC ordered deadline expired without the USAC either obtaining an extension or issuing an award or denial of Application 309196 and its related FRNs as required by the Order. At this late date the USAC is barred by the terms of the FCC Order and estoppel from raising any alleged "improper" procurement issues concerning Application 309196 or the related FRNs.

3. The Administrator's Decision and all other USAC actions taken with respect to reducing the funding of the FRNs associated with Application 309196 and any collection or demand proceedings associated therewith were rendered null and void due to the USAC's failures to comply with the requirements set forth in the FCC Order in Proceeding Number DA 08-2363.

On October 30, 2008 the FCC released its Decision DA 08-2363 granting a number of appeals including ICM's 2007 FCC Appeal with respect to Application 309196 and the associated FRNs and remanded the matter back to the USAC "for further processing" in accordance with the FCC Order. The FCC in that Order directed that the "USAC complete its review of the applications listed in the Appendix (which includes Application 309196 and its associated FRNs) and "issue an award or denial based on a complete review and analysis no later than 90 calendar days from the release of this order." (emphasis added) (Enclosure B, page 4). Since the date of the release of the Order was October 30, 2008, 90 calendar days from that date is January 28, 2009. The Administrator's Decision which is the subject matter of this appeal was issued on February 5, 2009, some eight (8) days after the deadline set forth in the Order. It is therefore on its face null and void.

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Additionally, FCC Order 06-55 provides in part "For each petitioner, we direct USAC to detail in writing to the applicant the specific information or documentation it seeks from the applicant. USAC should then permit the petitioners to provide the information to USAC within 15 calendar days from the date of receipt of the written notice that additional information is required." (Enclosure B, page 4). If you read these two sentences together it is clear that not only the "applicant" but also the "petitioner" should receive a copy of the "detail in writing" concerning "the specific information or documentation it seeks". There is no evidence in the Administrator's Decision that the USCA produced such a "detail in writing" nor is there any indication that it delivered or attempted to deliver it to the applicant and it did not deliver such a "detail in writing" to the Petitioner, ICM. The USAC's failure to comply with this keystone requirement of the FCC Order vitiates and nullifies the Administrator's Decision as a matter of law.

CONCLUSION

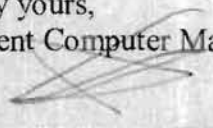
For the reasons set forth above, the FCC should grant this appeal and make a determination that:

1. In the event there was any improper actions with respect to Application 309196 and the associated FRNs, such actions were those of New Visions Academy and other third parties and it is those parties to which USAC should direct its recovery efforts and not against ICM which was and is an innocent service provider; and
2. All actions by the USAC to deny or reduce funding with respect to Application 309196 and the associated FRNs subsequent to May 2, 2006 when the FCC in Proceeding FCC-06-05 adopted an Order under CC Docket No. 02-6 are invalid because the USAC failed to comply with the requirements and provisions of that Order; and
3. All actions by the USAC to deny or reduce funding with respect to Application 309196 and the associated FRNs are null and void by reason of the USAC failure to comply with the provisions and requirements of FCC Decision DA 08-2363.

If you have any further questions concerning this matter, please contact the undersigned or our Counsel, Gary Marcus of the law firm, Gary Marcus, Attorney at Law, P.C. 600 Old Country Road, Garden City, NY 11530. (516) 301-7776.

Thank you for giving this your immediate attention.

Very truly yours,
Independent Computer Maintenance, LLC

By 
Anthony Natoli, President

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cc: Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

Enclosure

A

Administrator's Decision on FCC Remand - Funding Year 2002-2003

February 5, 2009

Anthony Natoli
Independent Computer Maintenance, LLC
1037 Route 46 East, Suite C-102
Clifton, NJ 07013

Re: Applicant Name: New Visions Academy
 Billed Entity Number: 223454
 Form 471 Application Number: 309196
 Funding Request Number(s): 803634, 803671, 803707, 803755, 803806
 FCC Order: DA 08-2363
 FCC Order Release Date: October 30, 2008

The Federal Communications Commission (FCC) has directed the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) to further review your application consistent with the FCC Order referenced above.

After thorough review and investigation of all the relevant facts, USAC has made its decision in regard to the FCC Remand of USAC's Funding Year 2002 Administrator's Decision on Appeal Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60-day time period for appealing this decision. If you included more than one Application Number in your appeal to the FCC, please note that you will receive a separate letter for each application.

Funding Request Number(s): 803634, 803671, 803707, 803755, 803806
Decision on FCC Remand: **Approved, Funding Denied**
Explanation:

- In accordance with the FCC decision in the released order (DA 08-2363), your appeal to the FCC has brought forward persuasive information that additional reviews must be completed in order to determine compliance with the rules of the Schools and Libraries Division Support Mechanism. However, after further review, USAC will be unable to provide discounts for your request for the reasons cited below.
- These funding requests were previously remanded to USAC as part of FCC Order 06-55. In order to comply with FCC Order 06-55, an entity needs to demonstrate that it fully

complied with all program rules and show that it did not violate the FCC's competitive bidding rules. Therefore, PIA had contacted Kathy Green, the applicant's authorized contact in June 2006 and September 2006 via fax and asked for information regarding similarities on Form 470s, in Selective Review responses and in technology plans among applicants that selected discount services from Diversified Computer Solutions. Six times within June 2006 and three times in September 2006, PIA also contacted Kathy Green via the phone. However, USAC was unable to determine if the funding requests were in compliance with the FCC's competitive bidding rules because Kathy Green, the authorized contact person, was non-responsive to USAC's inquiries.

- Subsequently, as a result of FCC Order 08-2363, USAC was directed to give the applicant another opportunity to respond to required questions/certifications. As a result, USAC attempted to reach the applicant and, in response, received information that New Visions Academy is closed. Therefore, USAC is unable to provide another opportunity for the applicant to respond to required questions/certifications. Although New Visions Academy is currently closed, Kathy Green, the authorized contact person, was available at the time of the 2006 requests for information. Only the applicant can provide the necessary information to make a determination of whether any competitive bidding violations occurred. Consequently, as the necessary information was and is not forthcoming, USAC is still unable to determine if the funding requests were in compliance with Program Rules.
- Additionally, the fact that a SPIN change occurred from DCS to ICM does not cure the competitive bidding violations. In this case, USAC has determined that both the applicant and service provider are responsible for the competitive bidding violations. If a SPIN change occurs, the new service provider needs to accept responsibility for what occurred during the bid process. Since the bid process has been found to be tainted, ICM is also responsible.
- USAC has discovered similarities between New Vision Academy's FCC Form 470 and/or responses provided to USAC as part of the FCC Form 471 review process and those of other billed entities that chose the same service provider. Similarities in the FCC Forms 470, Selective Review Information Request responses and Technology Plans indicate that the service provider was improperly involved in the competitive bidding process. During the review process, USAC gave New Vision Academy an opportunity to demonstrate that the competitive bidding process was not compromised and New Vision Academy failed to do so. Since you violated the FCC competitive bidding rules, USAC rescinded your funding requests and sought recovery of any funds disbursed. On appeal, you have not demonstrated that USAC's determination was incorrect. Consequently, your funding is denied
- FCC rules require that, except under limited circumstances, an eligible school, library or consortium that includes an eligible school or library shall seek competitive bids for all services eligible for support. See 47 C.F.R. sec. 54.504(a). An applicant violates the FCC's competitive bidding requirements when it surrenders control of the bidding process to a service provider who participated in the competitive bidding process as a

bidder. See Request for Review by Mastermind Internet Services, Inc, Federal-State Joint Board on Universal Service, *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45, Order, 16 FCC Rcd 4028, FCC 00-167, para. 9-10 (rel. May 23, 2000). In cases where the Administrator finds "carbon copy" technology plans and FCC Forms 470 across a series of applications, especially where the services and products requested are complex or substantial, and when the same service provider is involved, it is appropriate for the Administrator to subject such applications to more searching scrutiny to ensure there has been no improper service provider involvement in the competitive bidding process. See Request for Review by Ysleta Independent School District, et al., Federal State Joint Board on Universal Service, *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45, 97-21, Order, FCC 03-313 para. 30 (rel. Dec. 8, 2003). The FCC's Fifth Report and Order requires recovery of all funds disbursed for any funding request in, which the competitive bidding rules have been violated. See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15815-15816, FCC 04-190 para. 21 (rel. Aug. 13, 2004).

If the Administrator's Decision on FCC Remand Letter indicates that your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience, and cooperation during the FCC Remand review process.

Schools and Libraries Division
Universal Service Administrative Company

Enclosure B



Federal Communications Commission
Washington, D.C. 20554

Memo

To: Anthony Natoli, President
Independent Computer Maintenance, LLC

From: Gina Spade, Assistant Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

Date: November 12, 2008

Re: DA 08-2363, Released October 30, 2008

Please find accompanying this memo the Commission's decision on your Request for Review. The accompanying decision may be referenced in the future by its Proceeding Number and release date: DA 08-2363, October 30, 2008.

If the Commission has granted your Request for Review, please contact the Universal Service Administrative Company (USAC) at 888-203-8100 for more information regarding your application. In addition, once USAC has reviewed your application at issue in the attached Order, you will receive a Revised Funding Commitment Decision Letter (RFCDL).

USAC required applicants to respond to its requests for additional or clarifying information or documentation within seven days of the applicant being contacted, unless the deadline was explicitly extended by USAC.⁴ After the seven days and any extension period had passed, USAC made its funding determination based on the information it had in its possession.⁵

3. In the *Alpaugh Order*, the Commission granted 78 appeals of applicants denied funding because they failed to respond to USAC's requests for information within the USAC-specified time frame.⁶ The Commission remanded the underlying applications to USAC for review and further processing.⁷ The order also instructed USAC, beginning with applications for Funding Year 2007, to detail in writing and with specificity to the applicant the information or documentation USAC is seeking and to give applicants a 15-day deadline for responses to such requests.⁸ USAC was instructed to continue to work with applicants beyond the 15 days when the applicants were attempting in good faith to submit the necessary documentation.⁹

III. DISCUSSION

4. We grant these 21 appeals of decisions reducing or denying requests for funding from the E-rate program and remand the underlying applications associated with these appeals to USAC for further action consistent with this order. The petitioners' requests for funding were denied or reduced because the applicants failed to respond to USAC's requests for information within the specified time frame. The petitioners generally argue that they did not receive USAC's request for additional information,¹⁰ they submitted the information USAC requested in a timely manner,¹¹ USAC never answered requests about

⁴ See, e.g., *Request for Review by Marshall County School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. USAC-220105, CC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd 4520, 4522, para. 6 (Wireline Comp. Bur. 2003) (USAC found that this procedure was necessary to prevent applicants from unduly delaying the application process); see also USAC Schools and Libraries Division website, <http://www.usac.org/sl/tools/news-archive/1998/041998.asp#problem>, (visited Oct. 28, 2008).

⁵ See *Alpaugh Order*, 22 FCC Rcd at 6036, para. 3.

⁶ *Id.* at 6036-37, para. 4.

⁷ *Id.* at 6037, para. 5.

⁸ *Id.* at 6038, para. 6. In the *Alpaugh Order*, the Commission also established a presumption that the applicants had received notice five days after such notice is postmarked by USAC. *Id.* at 6038, n. 14.

⁹ *Id.* at 6038, para. 6 n. 14.

¹⁰ See Letter from James McGuinness, on behalf of Newburgh Enlarged City School District, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed June 9, 2005); Letter from Al Spinks, on behalf of Gulf Shores Academy, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed July 23, 2007); Letter from Anthony Natoli, on behalf of New Horizons Academy (a/k/a New Visions Academy), to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Aug. 10, 2007) (noting that it was the service provider, not the applicant); Letter from Leslie Iapicco, Palisades Park Board of Education, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Mar. 15, 2007); Letter from Jane Pitts, To'Hajiilee Community School, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Apr. 30, 2007); Letter from Provida Masi, Port Carbon Public Library, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed May 1, 2008).

¹¹ See Letter from Richard Larson, on behalf of Excellence Charter School of Bedford-Stuyvesant, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed Mar. 22, 2007); Letter from Linda Clinkenbeard, Fort Gibson Public Schools, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Nov. 23, 2007) (Fort Gibson Request for Review); Letter from Winston

what specific documentation was sought,¹² or they lacked sufficient staff to permit them to submit the information on time.¹³

5. Balancing the facts and the circumstances of these specific cases as described below, we find that good cause exists to grant these appeals and remand them to USAC for further processing. Importantly, as the Commission found in the *Alpaugh Order*, these types of appeals involved a procedural error on the part of the petitioners, not a failure to adhere to a core program requirement or a misuse of funds.¹⁴ As the Commission observed in the *Alpaugh Order*, given that any violations that occurred were procedural, not substantive, the complete rejection of these applications is not warranted.¹⁵ The Commission also recognized that these appeals involve a processing deadline, not a program rule.¹⁶ Although deadlines are necessary for the efficient administration of the program, in these cases, the applicants have demonstrated that rigid adherence to such procedures does not further the purposes of section 254(h) of the Communications Act of 1934, as amended, or serve the public interest.¹⁷

6. We note that granting these appeals should have a minimal impact on the universal service fund because the monies needed to fund the underlying applications, should they all be fully funded, have already been collected and held in reserve.¹⁸ We therefore find that good cause exists to grant and remand

Hinsworth, Garden City Union Free School District, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed July 18, 2008); Letter from Brenda Lindsey, Grady Municipal Schools, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Apr. 11, 2007) (SLD-534639); Letter from Brenda Lindsey, Grady Municipal Schools, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Apr. 11, 2007) (SLD-537939); Letter from Ashley Jordan, on behalf of Hayti School District R 2, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed Nov. 26, 2007) (Hayti Request for Review); Letter from Winston Greenwell, New Horizons Regional Educational Centers, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Aug. 13, 2007); Letter from Jim Curtis, Portage Lake District Library, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Nov. 15, 2006); Letter from Theresa DePietro, Tucson Academy of Leadership and Arts, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed June 20, 2006); Letter from Damien Doguet, on behalf of Vineland Community Demonstration School, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed Apr. 6, 2007); Letter from LeeAnn Errotabere, Visalia Unified School District, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Nov. 20, 2006).

¹² See Letter from Loraine Saffer, Southeastern BOCES, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Jan. 3, 2006).

¹³ See Letter from Thomas Allcock, Raymond-Knowles Union Elementary School, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Apr. 9, 2007); Letter from Michelle Yazzie, St. Michaels Association for Special Education, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed Jan. 2, 2008) (St. Michaels Request for Review); Letter from Walter Fox, Spring Branch Independent School District, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed June 9, 2005); Letter from Emily Vaughn-Henry, West Contra Costa Unified School District, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed Mar. 20, 2007).

¹⁴ See *Alpaugh Order*, 22 FCC Rcd at 6037, para. 5.

¹⁵ *Id.*, citing *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487170, *et al.*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316, 5319, para. 9 (2006) (*Bishop Perry Order*).

¹⁶ *Alpaugh Order*, 22 FCC Rcd at 6037, para. 5; *Bishop Perry Order*, 21 FCC Rcd at 5319, para. 9.

¹⁷ 47 U.S.C. § 254(h). The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, amended the Communications Act of 1934.

¹⁸ We estimate that the appeals granted in this order involve applications for approximately \$2.5 million in funding for Funding Years 2002-2008. We note that USAC has already reserved sufficient funds to address outstanding

these appeals. For each petitioner, we direct USAC to detail in writing to the applicant the specific information or documentation it seeks from the applicant.¹⁹ USAC should then permit the petitioners to provide the information to USAC within 15 calendar days from the date of receipt of the written notice that additional information is required.²⁰ To ensure these issues are resolved expeditiously, we direct USAC to complete its review of the applications listed in the Appendix and issue an award or a denial based on a complete review and analysis no later than 90 calendar days from the release date of this order.²¹ In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications.²² We remind USAC of its obligation to independently determine whether the disbursement of universal service funds would be consistent with program requirements, Commission rules and orders, or applicable statutes and to decline to disburse funds where this standard is not met.

7. We emphasize the limited nature of this decision. As stated above, we recognize that filing deadlines are necessary for the efficient administration of the E-rate program. Although we grant the subject appeals before us, our action here does not eliminate USAC's deadlines for processing applications.²³ In addition, this decision is not intended to reduce or eliminate any application review procedures or lessen the program requirements that applicants must comply with to receive funding. We continue to require E-rate applicants to submit complete and accurate information to USAC in a timely fashion as part of the application review process.

8. Finally, we emphasize that the Commission is committed to guarding against waste, fraud, and abuse, and ensuring that funds disbursed through the E-rate program are used for appropriate purposes. Although we grant the appeals addressed here, the Commission reserves the right to conduct audits or investigations to determine compliance with the E-rate program rules or requirements. Because audits and investigations may provide information showing that a beneficiary or service provider failed to comply with the statute or Commission rules, such proceedings can reveal instances in which universal service funds were disbursed improperly or in a manner inconsistent with the statute or the Commission's rules. To the extent we find that funds were not used properly, the Commission will require USAC to recover such funds through its normal process. We emphasize that the Commission retains the discretion

appeals. *See, e.g.,* Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter 2008 (Aug. 1, 2008). Thus, we determine that the action we take today should have minimal impact on the universal service fund as a whole.

¹⁹ *See Alpaugh Order*, 22 FCC Rcd at 6037-38, para. 6.

²⁰ *Id.* As in the *Alpaugh Order*, there is a presumption that the applicant has received notice five days after the postmark date of such notice.

²¹ In performing a complete review and analysis of each underlying application, USAC shall either grant the underlying application before it, or, if denying the application, provide the applicant with any and all grounds for denial.

²² Additionally, nothing in this order is intended: (1) to authorize or require payment of any claim that previously may have been released by a service provider or applicant, including in a civil settlement or plea agreement with the United States; or (2) to authorize or require payment to any person or entity that has been debarred from participation in the E-rate program.

²³ We note that the Commission has initiated a proceeding to address whether particular deadlines should be modified. *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Linkup, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, WC Docket Nos. 05-195, 02-60, 03-109, CC Docket Nos. 96-45, 02-6, 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308, 11321, para. 29 (2005).

to evaluate the uses of monies disbursed through the E-rate program and to determine on a case-by-case basis that waste, fraud, or abuse of program funds occurred and that recovery is warranted. The Commission remains committed to ensuring the integrity of the program and will continue to aggressively pursue instances of waste, fraud, or abuse under the Commission's procedures and in cooperation with law enforcement agencies.

IV. ORDERING CLAUSES


9. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Requests for Review listed in the Appendix ARE GRANTED and REMANDED to USAC for further consideration consistent with the terms of this order.

10. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that section 47 C.F.R. § 54.720 of the Commission's rules, 47 C.F.R. § 54.720, IS WAIVED to the extent provided therein.

11. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that USAC SHALL COMPLETE its review of each remanded application listed in the Appendix and ISSUE an award or a denial of each application based on a complete review and analysis no later than 90 calendar days from release of this order.

12. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION



Jennifer K. McKee
Acting Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

APPENDIX

Applicant	Application Number	Funding Year	Date Request for Review Filed
Excellence Charter School of Bedford-Stuyvesant Brooklyn, NY	528588	2006	Mar. 22, 2007
Fort Gibson Public Schools Fort Gibson, OK	586371	2007	Nov. 23, 2007
Garden City Union Free School District Garden City, NY	638307	2008	July 18, 2008
Grady Municipal Schools Grady, New Mexico	534639, 537939	2006	Apr. 11, 2007
Independent Computer Maintenance (New Visions Academy a/k/a New Horizons Academy) Newark, New Jersey	309196	2002	Aug. 10, 2007
Joseph Jingoli & Son, Inc. (Vineland Community Demonstration School) Lawrenceville, NJ	522146	2006	Apr. 6, 2007
New Horizons Regional Education Centers Hampton, VA	564836	2007	Aug. 13, 2007
Newburgh Enlarged City School District Newburgh, NY	425779	2004	Jun. 9, 2005
Palisades Park Board of Education Palisades Park, NJ	521924	2006	Mar. 15, 2007
Port Carbon Public Library Port Carbon, PA	559669	2007	May 1, 2008
Portage Lake District Library Houghton, MI	537714, 537818	2006	Nov. 15, 2006
Raynor Services, Inc. (Gulf Shores Academy) Houston, TX	475236	2005	July 23, 2007
Raymond-Knowles Union Elementary School Raymond, CA	536960	2006	Apr. 9, 2007
St. Michaels Assoc. for Special Education St. Michaels, AZ	584147	2007	Jan. 2, 2008
Southern BOCES Lamar, CO	476236	2005	Jan. 3, 2006
Spring Branch Independent School District Houston TX	388996	2004	Jun. 9, 2005
To'Hajiilee Community School To'Hajiilee, NM	484722	2005	Apr. 30, 2007
TriStar Group (Hayti School Dist. R 2) Hayti, MO	579480	2007	Nov. 26, 2007

Applicant	Application Number	Funding Year	Date Request for Review Filed
Tucson Academy of Leadership and Arts Tucson, AZ	484783	2005	Jun. 20, 2006
Visalia Unified School District Visalia, CA	530530	2006	Nov. 20, 2006
West Contra Costa Unified School District Richmond, CA	532568	2006	Mar. 20, 2007

Enclosure C

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NEW VISIONS CDC

PAGE 01

New Visions Academy
A School of Excellence
730 South 37th Street
Newark, NJ 07102
Mrs. Linda Johnson, Administrator
Mrs. Larissa Brown, Director

August 11, 2002

We are requesting an operational SPIN change for the following:

Billed entity number: 223434

Applicant name: NEW VISIONS ACADEMY

Funding request numbers: 802707, 803755, 803805

Form 478 application number: 309198

Applicant contact: Kathy Green

Applicant Phone: (973) 399-7829

Applicant E-mail address: N/A

Original SPIN: 42034939

Original service provider: Diversified Computer Solutions, Inc.

Original service provider contact: Betty Gill

Original service provider phone: (973) 398-0424

Original service provider E-mail address: bgill@diversifiedcs.com

PLU - SPIN: 142028575

New service provider: Independent Computer Maintenance LLC

New service provider contact: Anthony Napol

New service provider phone: (973) 616-1800

New service provider E-mail address: anapol@icmcorporation.com

Proposed effective date of the SPIN change: July 1, 2002

I certify that (1) all SPIN changes requested in this letter are allowed under all applicable state and local procurement rules, (2) the SPIN changes are allowable under the terms of the contract, if any, between the applicant and its original service provider, and (3) the applicant has notified its original service provider of its intent to change service providers.

Thank you for your attention to this matter.


Kathy Green

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New Visions Academy
A School of Excellence
 730 South 20th Street
 Newark, NJ 07103
 Mrs. Linda Johnson, Administrator
 Mrs. Latoya Brown, Director

New Visions

September 29, 2003

We are requesting an operational SPIN change for the following:

Billed entity number: 223454

Applicant name: NEW VISIONS ACADEMY

Funding request numbers: 803674, 803671, 803634 (TI)

Form 471 application number: 309196

Applicant contact: Kathy Green

Applicant Phone: (973) 190-7829

Applicant E-mail address: N/A

Original SPIN: 143024755

Original service provider: Diversified Computer Solutions, Inc.

Original service provider contact: Betty Gill

Original service provider phone: (973) 598-0424

Original service provider E-mail address: bgill@dcssupport.com

New SPIN: 143026575

New service provider: Independent Computer Maintenance LLC

New service provider contact: Anthony Natoli

New service provider phone: (973) 916-1800

New service provider E-mail address: tonyn@icmcorporation.com

Proposed effective date of the SPIN change: July 1, 2003

I certify that (1) all SPIN changes requested in this letter are allowed under all applicable state and local procurement rules, (2) the SPIN changes are allowable under the terms of the contract, if any, between the applicant and its original service provider, and (3) the applicant has notified its original service provider of its intent to change service providers.

Thank you for your attention to this matter.

Kathy Green
 Kathy Green

11/20/2003

Alvin
11/20/2003

Hrs.
payment
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TONY NATOLI

From: "SLDClient Operations" <SLDClientOperations@sl.universalservice.org>
To: <TonyN@icmcorporation.com>
Sent: Tuesday, August 26, 2003 3:55 PM
Subject: E-Rate Program/Confirmation of SPIN Change/FRNs 803707, 803765, 803806

A request to change/confirm the Service Provider on the following Funding Request(s) (FRN) was granted.

As the new Service Provider, you will receive a Funding Commitment Decision Letter (FCDL). PLEASE NOTE: While this FCDL will contain more detailed information on the FRN(s) listed below, it will show the ORIGINAL COMMITMENT amount, rather than the amount that remains undisbursed for this FRN.

THIS E-MAIL IS FOR ADVISORY PURPOSES ONLY. REPLIES WILL NOT BE RECEIVED. IF YOU HAVE QUESTIONS REGARDING THE SUBJECT OF THIS ADVISORY E-MAIL, PLEASE CALL OUR CLIENT SERVICE BUREAU AT 1-888-203-8100.

Applicant:

NEW VISIONS ACADEMY

739 SOUTH 20TH STREET

NEWARK, NJ 07103

Contact: KATHY GREEN Phone: (973) 399-7829

Form 471 Application Number: 302126

Funding Request No. (FRN): 803707

New Service Provider: Independent Computer Maintenance, LLC

New SPIN: 143026575

Original Commitment Amount: \$34,344.00

Disbursement Amount: \$0.00

CAP Remaining: \$34,344.00

Date of Change: 8/19/03

A Form 486 has been filed for this FRN: Yes

This FRN includes Non-Recurring Services: Yes

Funding Request No. (FRN): 803755

New Service Provider: Independent Computer Maintenance, LLC

New SPIN: 143076575

Original Commitment Amount: \$46,746.00

Disbursement Amount: \$0.00

CAP Remaining: \$46,746.00

Date of Change: 8/19/03

A Form 486 has been filed for this FRN: Yes

This FRN includes Non-Recurring Services: Yes

Funding Request No. (FRN): 803806

New Service Provider: Independent Computer Maintenance, LLC

New SPIN: 143026575

Original Commitment Amount: \$75,499.56

Disbursement Amount: \$0.00

CAP Remaining: \$75,499.56

Date of Change: 8/19/03

A Form 486 has been filed for this FRN: Yes

This FRN includes Non-Recurring Services: Yes

New Visions

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FUNDING COMMITMENT REPORT

Service Provider Name: Independent Computer Maintenance, LLC
 Service Provider Identification Number: 143026575

Funding Request Number: 803634
 Form 471 Application Number: 309196
 Form 470 Application Number: 842960000400898
 Name of 471 Applicant: NEW VISIONS ACADEMY
 Applicant Street Address: 755 SOUTH 29TH STREET
 Applicant City: NEWARK
 Applicant State: NJ
 Applicant Zip: 07103
 Entity Number: 223454
 Name of Contact Person: KATHY GREEN
 Preferred Mode of Contact: PHONE
 Contact Information: (973) 399-7829
 Funding Year: 2002 (07/01/2002 - 06/30/2003)
 Funding Status: Funded
 Contract Number: 10702
 Services Ordered: Internet Access
 Site Identifier: 223454
 Billing Account Number: N/A
 Allowable Vendor Selection/Contract Date: 01/11/2002
 Contract Award Date: 01/12/2002
 Earliest Possible Effective Date of Discount: 07/01/2002
 Contract Expiration Date: 06/30/2003
 Monthly Recurring Charges: \$0.00
 Portion of Monthly Recurring Charges that is Ineligible: \$0.00
 Eligible Monthly Pre Discount Amount for Recurring Charges: \$0.00
 Number of Months Recurring Service Provided in Funding Year: 12
 Annual Pre-Discount Amount for Eligible Recurring Charges: \$0.00
 Annual Non-Recurring Charges: \$19875.00
 Portion of Annual Non-Recurring Charges that is Ineligible: \$0.00
 Annual Pre-Discount Amount for Eligible Non-Recurring Charges: \$19875.00
 Total Program Year Pre-Discount Amount: \$19875.00
 Applicant's Approved Discount Percentage: 38
 Funding Commitment Decision: \$17887.50 - FRN approved as submitted
 Technology Plan Approval Status: Approved
 Wave Number: 002
 Approval Letter Date: 10/02/2002

[Signature]
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 6/30/03

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